Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1999

H. EVEREST WILHELMSEN,
Petitioner,

v.

MURRAY R. WALSH, BILL CORBUS, JOHAN DYBDAHL, ALBERT CLOUGH, GABRIALLE LAROCHE, ROSEMARY HAGEVIG, BOYD G. BROWNFIELD, CHUCK ACHBERGER, MIKE BAVARD, JOHN MACKINNON, RALPH KIBBY, STEVEN GILBERTSON, KEVIN G. MEYER, ROBIN HEINRICHS, BETH KERTTULA, DAVID WEINGARTNER, MARK PALESH, DONALD CHENHALL, KRISTEN BOMENGEN, SCOTT NOVAK, JOHN R. CORSO, BYRON MALLOTT, CHARLES EADDY, ELLEN FRITTS, DENNIS EGAN, DWIGHT PERKINS, CHARLES NORTHRIP, GRETCHEN KEISER, DIANE MAYER, STEPHEN WHITE, LAMAR COTTEN, STEPHEN SORENSEN, BETTY GLICK, KARI WESTLUND, TOM GARRETT, KIRBY DAY, CITY & BOROUGH OF JUNEAU, STATE OF ALASKA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF ALASKA

PETITION FOR WRIT OF CERTIORARI

BY: H. Everest Wilhelmsen

H. Everest Wilhelmsen
Plaintiff Pro Se of Record
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## I. QUESTIONS PRESENTED FOR REVIEW.

1. May government employees and officials responsible to implement the coastal zone management program knowingly and routinely violate implementation requirements when issuing leases and development permits, (i.e., violate "enforceable policies" and purposes of the federal Coastal Zone Management Act of 1972 as amended by P.L. 101-508, November 1990, and P.L. 104-150, the Coastal Zone Protection Act of 1996)?

2. May a state's administrative employees or officials willfully and routinely refuse to consider properly presented written and oral comments during consistency review petitions that show these unwarranted favors: additionally violating federal implementation requirements by making arbitrary determinations and simultaneously violating rights that rely solely upon obeyance and enforcement of the program?

3. May a state also deny petitioners rights to fair reviews before the Superior Court (until it is too late) by filing motions to dismiss rather than automatically converting actions for injunctive relief and subsequent actions for declaratory relief and damages into administrative appeals when actions for damages result from an administrative order and seek the exact same review as an administrative appeal?

## II. ADMINISTRATIVE ORDER AND OPINIONS.

a. On April 26, 1995 an Alaska Superior Court denied petitioner's first request for a temporary restraining order.

b. On April 27, 1995 the State of Alaska Division of Governmental Coordination issued an administrative order (Final Consistency Determination for Mt. Roberts Development Corporation's proposed project).

c. On October 28, 1995 the Alaska Superior Court denied petitioner's second request for a temporary restraining order. Petitioner's Motion for Reconsideration was denied.

d. On December 26, 1999 the Superior Court dismissed petitioner's amended complaint that included a claim for damages and petitioner's Motion for Reconsideration was denied.

e. On May 26, 1999 the Supreme Court of Alaska in MEMORANDUM OPINION AND JUDGMENT No. 0924 affirmed the Superior Court's dismissal of the amended complaint and petitioner's Petition for Rehearing was then denied.

## III. JURISDICTION.

The decision of the Alaska Superior Court to dismiss petitioner's amended complaint was entered on December 26, 1996. On appeal, the Supreme Court of Alaska's MEMORANDUM OPINION AND JUDGMENT No. 0924 was entered on May 26, 1999 and petitioner's Petition for Rehearing was denied on June 24, 1999.

Jurisdiction comes under Rule 10 of the United States Supreme Court Rules of Appellate Procedure and this petition is timely filed under Supreme Court Rule 13.

## IV. FEDERAL AND CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED.

The federal Coastal Zone Management Act of 1972 as amended by P.L. 101-508, November 1990, and P.L. 104-150, the Coastal Zone Protection Act of 1996, § 303 (16 U.S.C. § 1452), Congressional Declaration of Policies; Article VIII, Section 10 of the Constitution of Alaska, that prohibits disposals of state land, or interests therein, "without prior public notice and other safeguards of the public interest that may be prescribed by law."

## V. STATEMENT OF THE CASE AND BASIS FOR JURISDICTION IN COURT OF FIRST INSTANCE.

This case involves violations of implementation requirements and purposes of the coastal zone management program, including citizen's rights to fair hearings when they stand in protection of this country's coastal areas and other rights that are simultaneously violated and rely solely upon obeyance and enforcement of the program.

H. Everest Wilhelmsen, as an effected citizen in his coastal district, was a participant in a Consistency Review process with the State of Alaska Division of Governmental Coordination ("DGC") regarding a proposed development project. Mr. Wilhelmsen properly presented his written comments to DGC during the process because he was concerned about numerous violations of implementation regulations of the coastal program that were committed specifically for the proposed project and were unreasonably denying him and others fair opportunity and rights to competitively bid for a 70 year lease of very valuable waterfront property.

Mr. Wilhelmsen also filed a petition regarding a Proposed Consistency Determination he had received from DGC for Mt. Roberts Development Corporation's proposed project because it appeared to him that DGC had not considered his comments on violations of implementation regulations committed specifically for Mt. Roberts Development Corporation. These are violations of public notice, land use, and land management regulations that federal and State of Alaska law requires to be properly administered, but this is not how it is done by local and state authorities in the City and Borough of Juneau ("CBJ").

At the very beginning of the hearing before the Coastal Policy Council, the Director of DGC, Diane Mayer, (who was at the time also a member of the Council), and a State's Assistant Attorney General representing DGC began arguing that Mr. Wilhelmsen not be allowed to speak regarding implementation violations. Mr. Wilhelmsen argued back on his own behalf (as an effected citizen) that he filed his petition under Alaska Statute 46. 40.100(b) which allows him to speak about implementation violations that are specific to a proposed project and that he should be allowed to speak freely on any subject pertaining to DGC's Proposed Consistency Determination for the project.

In short, Diane Mayer thoroughly convinced the Coastal Policy Council to do as she pleased (even though she took part in issuing the Proposed Consistency Determination) and the Council would not consider the implementation violations Mr. Wilhelmsen brought to their attention prior to instructing DGC to issue the Final Consistency Determination and state permits to Mt. Roberts Development Corporation for the proposed project.

These issues were brought forward at every juncture. When Mr. Wilhelmsen requested injunctive relief to stop DGC's issuance of the administrative order, the Superior Court ruled that his "complaint does not allege the irreparable harm that is required by Civil Rule 65." When later requesting injunctive relief to stop construction, the Court again asked him to show irreparable harm and also asked for a 5 million dollar bond requested by Mt. Roberts Development Corporation.

It was five months after the 18 million dollar project was completed that the Court dismissed Mr. Wilhelmsen's complaint based upon defendants' claim of immunity. It was also at this time that the Court ruled that Mr. Wilhelmsen be allowed to refile his complaint as an administrative appeal before the Court and Mt. Roberts Development Corporation then sold its interests in the 70 year lease and project to a partner (limited partnership).

The Supreme Court of Alaska chose to not consider "immunity" and after receiving supplemental briefing determined that defendants owed no actionable duty to Mr. Wilhelmsen, though the state was not sued for damages, but for injunctive and declaratory relief. Mr. Wilhelmsen believes he has been deprived of a number of fair hearings at this point and he prays the United States Supreme Court will bring justice into this case. If not for himself, for the public's best interests.

Respectfully submitted this 22nd day of September, 1999.

H. Everest Wilhelmsen
Plaintiff Pro Se